

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

GARY HUGHBANKS,

Petitioner, : Case No. 1:07-cv-111

- vs -

Magistrate Judge Michael R. Merz

STUART HUDSON, Warden,

Respondent.

DECISION AND ORDER

This capital habeas corpus case is before the Court pursuant to a status conference telephone call on November 1, 2017.

In his Twenty-First Claim for Relief, Petitioner asserts that “he will be incompetent and insane at the time of his scheduled execution and consequently his execution will violate the Eighth and Fourteenth Amendments.” (Third Amended Petition for Writ of Habeas Corpus, ECF No. 213, PageID 15907). This claim for relief purports to state a claim under *Ford v. Wainwright*, 477 U.S. 399 (1986), that will not be ripe until Mr. Hughbankss’ execution is imminent. That is not presently the case. The Ohio Department of Rehabilitation and Correction has issued a schedule of executions through April 21, 2022, which does not include Petitioner.

Therefore, upon Petitioner’s oral motion during the status conference, with consent of the Respondent, pursuant to Fed. R. Civ. P. 41, Claim of Relief Twenty-One is DISMISSED

WITHOUT PREJUDICE.

November 3, 2017.

s/ *Michael R. Merz*
United States Magistrate Judge